

BOARD OF APPEALS CASE NO. 5374

*

BEFORE THE

**APPLICANT: Charles & Joanne Oliver,
300 PM LLC**

*

ZONING HEARING EXAMINER

**REQUEST: Variance to permit 4 lots on a
panhandle; 300 Patterson Mill Road, Bel Air**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 8/27/03 & 9/3/03

HEARING DATE: October 15, 2003

*

Record: 8/29/03 & 9/5/03

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Charles and Joanne Oliver (owners), and the Co-Applicant, 300 PM, LLC (contract purchaser), are seeking a variance, pursuant to Section 267-22G(1) of the Harford County Code, to create more than one (1) lot on a panhandle (proposed 4 panhandle lots) in an R1 District.

The subject property is located at 300 Patterson Mill Road, Bel Air, Maryland 21014, in the First Election District, and is more particularly identified on Tax Map 49, Grid 4E, Parcel 791. The parcel is zoned R1/Urban Residential District, and contains approximately 7.09 acres.

Mr. William Harrison appeared and testified that he is a member of 300 PM, LLC, which is the Co-Applicant and contract purchaser of the Oliver property. His son, Trent Harrison, is the only other member of the LLC. Mr. Harrison stated that the subject property fronts on Patterson Mill Road, directly across the street from the Kings Charter development. The parcel is a long, narrow, rectangularly shaped lot, which contains approximately 7 acres. The witness and his wife own a 4-acre parcel which adjoins the subject property to the northeast. They have lived on the adjacent lot for over 18 years.

According to Mr. Harrison, the topography of the subject parcel ranges from rolling to steep. It is flat at the site of the existing Oliver home, but from there it slopes downward to the pond, and then dramatically downward to the Bynum Run stream valley. He testified that both his property, and the adjoining Hodous property, to the east, are 100% wooded and that the subject parcel is approximately 70% wooded. The Hodous property was subdivided approximately 10 years ago. At that time, the property owners were granted a variance to develop four panhandle lots. The Board of Appeals decision granting the variance requested in the Hodous case (Case No. 3933) was introduced as Applicant's Exhibit 1.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Mr. Harrison indicated that his development goal for the subject parcel is to retain as much of the property in its current natural state as possible. He is not interested in developing the parcel at maximum density. His son and daughter will construct homes on two of the lots. The other three lots will be sold. The witness referred to Applicant's Exhibit 3, and stated that the green shaded area around the existing pond depicts an existing Natural Resource District, which contains approximately 2.5 acres. If the requested variance is granted, the Applicants propose to incorporate this area into their adjoining parcel. They will thereafter assume full responsibility for care and maintenance of that portion of the property.

Ms. Joan Hodous, whose property adjoins the subject parcel to the east, appeared and cross-examined the witness regarding the quality of homes to be built on the proposed lots. Mr. Harrison responded that the former Oliver house will remain on Lot 2. He also stated that all of the new homes will be custom built, and will be comparable to the existing Oliver home. In addition, the LLC plans to enact size restrictions similar to those found in the nearby Parsons Ridge Development.

Mr. Fred Hodous then cross-examined the witness as to whether the restrictions would remain in place if the lots were sold to a builder. Mr. Harrison responded in the affirmative, indicating that the restrictions will run with the land. He also testified that he will remain on the architectural committee which will approve plans for all new homes built on the proposed lots.

Mr. Mitch Ensor, a professional land planner, and part owner of the firm Wilson Deegan and Associates, Inc., appeared on behalf of the Applicant. Mr Ensor testified that he works in the area of subdivision and land development, and that he has been involved in planning between 150 and 200 subdivisions. The witness indicated that the Harrisons wish to purchase and develop the Oliver property, which is located within the development envelope. Based on the existing R1 zoning, they would be entitled, as a matter of right, to construct 12 homes accessible by way of a 24 foot wide cul-de-sac. Instead, the Harrisons wish to develop the parcel in a way which would maintain appropriate lot sizes, and preserve sensitive environmental features found on the property. They are proposing to develop only five (5) lots, four (4) of which will be panhandle lots accessible by way of a much narrower common drive.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Referring to the design proposal, introduced as Applicant's Exhibit 2, the witness pointed out that this plan would require the clearing of only 39,300 square feet, and would create 20,693 square feet of impervious surface. Development in this manner would require a variance to allowing 4 panhandle lots on the property.

The witness further stated that the subdivision proposal requires only 4 panhandle lots because Lot 1 has existing road frontage and, therefore, does not qualify as a panhandle lot. If the requested variance is granted, the remaining 4 lots will be accessed via a common drive, and all four property owners will be required to sign a common drive agreement. Mr. Ensor reiterated that if the requested variance is granted, the Harrisons will incorporate the existing pond and Natural Resource District into their adjoining parcel, to minimize clearing, and consolidate environmental features into one block of ownership.

The witness then referred to Applicant's Exhibit 3, which he described as an alternate design proposal for the development of 8 lots accessible via a 24 foot wide paved cul-de-sac. The Applicants could develop the property in this configuration without the necessity of obtaining a variance; however, due to the significant expense of constructing the required public road, they would need to create 8 lots in order to defray the additional development costs. This would necessitate clearing 51,800 square feet of mature forest, and would create 53,847 square feet of imperious surfaces. He indicated that this plan would be less desirable from a natural resources standpoint. He further stated that the development of 5 lots, as opposed to 8, would result in less adverse impact to the district, as larger areas would be preserved intact. In addition, the construction of three less homes with a narrower common drive would create significantly fewer impervious surfaces on the property.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Finally, Mr. Ensor stated that in his opinion, development of the subject parcel with 4 panhandle lots would be consistent with all of the requirements set forth in Section 267-9I of the Harford County Code. Specifically, fewer home sites would result in less traffic, and the proposal will not create any odors or fumes, or have any impact on the orderly growth of the neighborhood, public services, schools, or open space. He also indicated that the proposed development would be consistent with generally accepted engineering principals, and with the Harford County Master Plan.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning, and testified regarding the findings of fact and the recommendations made by that agency. He verified that the Department recommended approval of the subject request in its Staff Report, subject to the conditions set forth in that Report. He also stated that the subject parcel has R1 zoning, and is located within the Development Envelope. According to Mr. McClune, development of the property in the proposed panhandle lot configuration will protect sensitive environmental features, including wetlands, located on the subject property.

He also pointed out that based on current zoning, the Applicants could construct 12 homes on the subject parcel as a matter of right. Because their proposal calls for the development of only 5 home sites, he stated that requested variance would have no adverse impact on adjacent or surrounding properties. Mr. McClune also testified that the intent of the Code is to protect Natural Resource Districts, and indicated that the development of a cul-de-sac and 8 lots, as opposed to the proposed 5 sites with 4 panhandle lots, would actually decrease protection of that district.

In response to cross-examination by the Applicant, Mr. McClune opined that denial of the requested variance would result in both practical difficulty and hardship to the Applicants, as there would be substantial additional costs involved in the development of a public cul-de-sac. This configuration would also result in additional expense to the County because it would be required to maintain the public road.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Finally, the witness testified that although the Co-Applicants have agreed to a condition requiring Lots 2, 3, 4, and 5 to share a common drive, the Department has actually proposed a condition requiring that all five (5) lots share one common drive.

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants are seeking a variance, pursuant to Section 267-22G(1) of the Harford County Code, to allow four (4) panhandle lots (one [1] permitted) in an R1 District.

Section 267-22G provides:

“Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.
- (2) Panhandles shall be a maximum of seven hundred (700) feet in length. The Zoning Administrator may grant a waiver of the maximum length where the topography, natural features or geometry of the parcel make a longer panhandle necessary.
- (3) A common drive shall be constructed to serve any group of two (2) or more panhandle lots. Driveways for all panhandle lots shall access from the common drive.
- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width:
 - (a) Single panhandles: twenty-five (25) feet.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

- (b) Double panhandles: twelve and one-half (12½) feet each, for a total of twenty-five (25) feet.
- (5) Where a common drive is required, the following shall apply:
 - (a) Prior to or at the time of recordation of a panhandle subdivision, the owner shall also record subdivision restrictions that shall provide for the construction, type, responsibility for the same, including all costs, and use and maintenance of the common drive, which shall be applicable to all lots subject to the common-drive plan. The subdivision restrictions shall be reviewed and approved by the Department of Law prior to recordation to ensure that all lots subject to the common-drive plan will be subject to the restrictions upon recordation thereof for inclusion in the deeds of conveyance.
 - (b) The Department of Planning and Zoning, with the advice of the Law Department, shall establish rules and regulations for the drafting of common-drive agreements.
 - (c) The county shall bear no responsibility for the installation or maintenance of the common drive."

Section 267-11 of the Harford County Code permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Under its present R1 zoning, the Applicants are entitled to develop up to 12 lots on the subject property as a matter of right. Rather than developing at maximum density, they are requesting a variance to develop a total of 5 lots, 4 of which will be panhandle lots. A variance is required because Section 267-22(G)(1) of the Harford County Code limits the number of panhandle lots allowed in an R1 District to the greater of one (1) lot, or five percent (5%) of the lots intended for detached dwellings.

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the trier of fact must then determine whether literal enforcement of the zoning ordinance with regard to the unique property, would result in practical difficulty or unreasonable hardship to the owner.

The Hearing Examiner finds that the subject property is unique. It is located within the Development Envelope and is serviced by public water and sewer, yet it is heavily wooded, and contains environmentally sensitive features, such as a pond, wetlands, flood plains, a stream buffer. It is also topographically unique, in that it contains steep slopes with grades in excess of twenty-five percent (25%).

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty for the Applicants. They have expressed a specific desire to develop the property at a lower than allowed density, in order to preserve natural resources, including mature trees, located on the property. Preservation of trees has been held to be a valid consideration in determining whether practical difficulty exists in a given case. McLean v. Soley, 210 Md. 208, 310 A. 2d 783 (1973). In keeping with their stated objective, the Applicants have proposed a design which calls for the development of 5 lots and a common drive, as opposed to the permitted 12 lots accessible via a public cul-de-sac.

Case No. 5374 - Charles & Joanne Oliver and 300 PM LLC

Under existing R1 zoning, the Applicants could construct 12 residences on the property without the necessity of obtaining a variance. These homes would be accessed by way of a 24-foot wide paved cul-de-sac. The additional costs to both the Applicant, and the County in connection with constructing and maintaining this public road would be significant. The Applicants would need to develop a minimum of eight lots in order to defray these costs. This would necessitate the removal of large numbers of mature trees, and also increase the quantity of impervious surfaces on the property. It would moreover defeat the Co-Applicants' stated goal of "developing the property at a low density and in an environmentally sensitive way."

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of this Code or the public interest. Rather, the proposed configuration will protect sensitive environmental features and mature trees located on the property, and will decrease impervious surfaces constructed on the subject parcel.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. The Applicant shall submit a detailed preliminary plan for review and approval by the Department of Planning and Zoning.
2. That a common drive shall be utilized by all five (5) lots. The Applicant shall prepare a common drive agreement to be reviewed and approved with the final plat.
3. That the Applicant shall obtain all necessary permits and inspections for the development of the subject property.
4. That a final plat be submitted to the Department of Planning and Zoning for approval and recordation in the County Land Records.
5. That the remaining lands of Oliver shall be combined with the lands of Harrison (Parcel 205) simultaneously with the recordation of these lots.

Date DECEMBER 2, 2003

Rebecca A. Bryant
Zoning Hearing Examiner